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In the Supreme Court of the United States

Supreme Court, U. S.
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No. ..... 71 - 776

UTAH PUBLIC SERVICE COMMISSION,

vs.

EL PASO NATURAL GAS COMPANY, et al.,
395 U.S. 464 (1969)

CASCADE NATURAL GAS CORP.,

vs.

EL PASO NATURAL GAS COMPANY,
386 U.S. 129 (1967)

Motion for Leave to File Motion for Modification of Mandate, to Shorten Period for Response Thereto to Enable Motion to be Heard During April Argument Session And for Opportunity to Present Oral Argument In Support of Said Motion

and

Motion for Modification of Mandate Issued In Above Cases to Enable the District Court to Determine Whether Divestiture Is the Appropriate Remedy Under the Present Circumstances

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Dated March 28, 1972

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Comes now Pacific Gas and Electric Company, intervenor in *United States v. El Paso Natural Gas Company*, et al., Civil Action No. C-143-57 in the United States District Court for the District of Utah, and presently an intervenor in *United States v. El Paso Natural Gas Company*, Civil Action No. C-2626, before the United States District Court for the District of Colorado now hearing the case on remand pursuant to the Court's order on remand in *Utah* and moves this Court for leave to file the annexed motion for modifi-

cation of mandate. This motion for leave to file should be granted for the following reasons:

In *United States v. El Paso*, 376 U.S. 651 (1964) at 662, the Court ordered divestiture "without delay." In his dissenting opinion, Mr. Justice Harlan said, "I know of no case where this Court has in the first instance itself directed divestiture or any other particular kind of relief." (at 664) There had been no reason for the trial court to explore the various possible remedies because it held that El Paso had not violated the Clayton Act.

The Attorney General then decided to settle the case and a consent decree was adopted as the judgment of the District Court. On appeal in *Cascade Natural Gas Corp. v. El Paso Natural Gas Company*, 386 U.S. 129 (1967), this Court set aside the consent decree and once again on remand ordered "divestiture without delay." (386 U.S. at 142) In its opinion therein, this court said: "No one, except this Court, has authority to alter or modify our mandate. *United States v. du Pont & Co.*, 366 U.S. 316, 325. Our direction was that the District Court provide for 'divestiture without delay.'" 386 U.S. at 136.

On remand the District Court selected Colorado Interstate Gas Company as the purchaser of the properties to be divested and adopted a plan of divestiture. The Utah Public Service Commission filed an appeal and later filed a motion to dismiss its appeal under Rule 60. This Court refused to permit Utah to withdraw its appeal and calling upon its "plenary power" to police its own mandate proceeded to review the District Court's order. The majority per Chief Justice Warren vacated the judgment of the District Court and remanded the case "for proceedings in conformity with this opinion" 395 U.S. 464, 472 (1969). The pertinent parts of the opinion relative to the mandate are included in the following:

"The purpose of our mandate was to restore competition in the California market. . . . (p. 470)

Our mandate directed complete divestiture (p. 471)

We have emphasized that the pinch on private interests is not relevant to fashioning an antitrust decree, as the public interest is our sole concern." (p. 471-472)

This history of the case demonstrates that it is the judgment of this Court which prescribed the remedy—divestiture—and which controls the proceedings to effect that remedy. If changed circumstances call for modification of the remedy, to serve the public interest, it is this Court which must act as long as its judgment allows no latitude for the District Court to adopt an alternative remedy to meet the new situation.

The threshold problem is that there is no explicit procedure for requesting modification of the judgment where this Court and not the District Court has prescribed the remedy. A District Court has the power to alter its judgment if changed circumstances indicate the desirability of doing so. Certainly then, this Court has the inherent power to do likewise with respect to its own mandates. The procedure for bringing changed circumstances to the attention of this Court to enable it to exercise this power must be a motion similar to that available for the purpose before a District Court, namely, a motion in nature of one under Rule 60 of the Rules of Civil Procedure. This is based on the broad extent of the Court's power which includes (a) the power vested in District Courts by Rule 60 and (b) the plenary power to police its own mandate.

Under Rule 60(b) of the Federal Rules of Civil Procedure: "On motion and upon such terms as are just, the Court may relieve a party or his legal representative from a final judgment, order, or proceeding [for specified reasons]

and for any other reason justifying relief from the operation of the judgment."

In *Klapprott v. U.S.*, 335 U.S. 601, 614-615 (1948) the Court said:

> "Furthermore, 60(b) strongly indicates on its face that courts no longer are to be hemmed in by the uncertain boundaries of . . . common law remedial tools. In simple English, the language of the 'other reason' clause, for all reasons except the five particularly specified, vests power in courts adequate to enable them to vacate judgment whenever such action is appropriate to accomplish justice."

This Court's rules must encompass similar relief when it has undertaken the role of the District Court and issued a judgment of divestiture as its mandate.

This motion need not rest solely on the analogy to Rule 60(b), for the Court has long held that it and it alone has the "authority to alter or modify" its own mandate, and that it has plenary power over such mandates. In *Continental Co. v. U.S.*, 259 U.S. 159, 167 (1921) this Court said:

> ". . . we have plenary jurisdiction to consider on our own motion whether our mandate has been complied with. We delegated to the District Court the duty of formulating a decree in compliance with the principles announced in our judgment of reversal, and that gives us plenary power where compliance has been attempted and the decree in any proper way is brought to our attention to see that it follows our opinion."

In *Cascade* (when the case at bar was before this Court for the second time) this Court said:

> "No one, except this Court, has authority to alter or modify our mandate. *United States v. du Pont & Co.*, 366 U.S. 316, 325."

and this was quoted with approval in *Utah* (the third stage of this case) 395 U.S. at 467. In the latter opinion, this Court held that the matter was properly before it by virtue of the filing of the jurisdictional statement by Utah even though appellant Utah filed a motion to dismiss its appeal under Rule 60 which, as Mr. Justice Harlan and Mr. Justice Stewart pointed out in their dissent, specifically provides that upon the filing of such a motion "the clerk shall, without further reference to the Court, enter an order of dismissal."

It is, thus, the settled procedure with specific reference to this litigation that this Court will entertain on its own motion a review of its own mandate if the matter is brought to the attention of the Court in any appropriate manner.

We submit, therefore, that this Court should accept for filing and consider the annexed motion for modification of mandate.

We request further that the motion for modification of mandate be decided at this term of Court, and, if the Court does not grant the motion *ex parte*, that it be heard during the April argument session of the Court, and that we be granted the opportunity for oral argument in support of said motion. If necessary to meet this time schedule, we request that the time for response to the annexed motion be limited to ten days.

Respectfully submitted,

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I

NATURE OF MOTION

This motion requests this Court to exercise its paramount and plenary power over its own mandate and is in the nature of a motion under Rule 60(b) of the Rules of Civil Procedure for partial relief from the order for divestiture mandated herein because:

(a) It is no longer in the public interest to give the divestiture order prospective application, and

(b) In particular the interests of the gas consumers in California (for whose benefit divestiture was ordered)

would be better served if a different remedy is applied. The District Court did not itself order divestiture. That was done by this Court; therefore, this is the only forum in which relief can be sought.

This Court has plenary power to police its own remand and hence the plenary power to alter its remand order when it finds that said order may, because of changed circumstances, be inequitable, undesirable in terms of the public interest, unnecessary to effectuate the policies of the Clayton Act under which said order was issued, and adverse to the gas consumers of California whose interest was to be served by divestiture.

II

SYNOPSIS OF POSITION

In *United States v. El Paso Natural Gas Company*, 376 U.S. 651 (1964), this Court held that El Paso acquired the stock of Pacific Northwest Pipeline Corporation in violation of Section 7 of the Clayton Act and, despite the subsequent merger of Pacific Northwest into El Paso pursuant to Federal Power Commission authorization (which this Court held should not have been given while the stock acquisition was the subject of litigation), ordered divestiture "without delay" *Id.*, at 662. A consent decree was thereafter entered by the District Court but on appeal, in *Cascade Natural Gas Corp. v. El Paso Natural Gas Company*, 386 U.S. 129 (1967), this Court set aside the decree and once again ordered "divestiture without delay." *Id.*, at 142. In the proceedings on remand the District Court adopted a plan for divestiture of the Pacific Northwest system to Colorado Interstate Gas Company. (618) On review of this order, in *Utah Public Service Commission v. El Paso Natural Gas Company*, et al., 395 U.S. 464 (1969) this Court rejected the District Court's plan and reiterated its order for divestiture of the properties of Pacific Northwest acquired in violation of the Clayton Act.

As late as 1969 when the case was last before the Court in *Utah*, divestiture still seemed to be the appropriate remedy. The dramatic change of circumstances since that time gives rise to our concern that pursuit of the original remedy would not achieve the intended objectives.

As the Court said in *Utah, Id.*, at 470; "The purpose of our mandate was to restore competition to California." The Court there also said: "We have emphasized that the pinch of private interests is not relevant to fashioning an anti-trust decree, as the public interest is our sole concern." *Id.*, at 471-472.

Under circumstances as they exist today, divestiture will harm California and the public interest. Divestiture will reduce California's position in the competitive arenas existing today.

Competition for markets no longer exist. *Markets compete for gas supplies.* The California market would be in a better competitive position if El Paso were not divested of the properties it acquired in violation of the Clayton Act, provided that an alternative remedy were to be adopted turning the acquisition into a vehicle for competition. The District Court should be freed from the shackles of the divestiture order so that it may adopt such a remedy if it finds it necessary in the circumstances to effectuate the policies of the Clayton Act and protect the interest of the gas consumers of California. To minimize time delay the District Court can use the record before it (supplemented if necessary) to determine the need for an alternative remedy and, if the record justifies such action, adopt the appropriate remedy. At the same time the Court may also select the applicant for acquisition and plan of divestiture to be followed if on appeal this Court were to hold, notwithstanding the changed circumstances, divestiture was the only acceptable remedy. El Paso's past misdeed should

not prevent this Court from permitting that to be done which is right today.

We do not ask this Court to undertake a detailed examination of the facts which would be appropriate for the District Court to consider in reviewing the appropriateness of the remedy. It is our request that the Court simply modify its mandate to unshackle the District Court from the narrow confines in which it now finds itself and give it the freedom to formulate the remedy most clearly in the public interest under present day conditions.

III

MOVANT AND ITS INTEREST

Movant, Pacific Gas and Electric Company, was an intervenor in *United States v. El Paso Natural Gas Company*, et al., designated Civil Action No. C-143-57 in the United States District Court for the District of Utah and, in the later stages of the case, petitioned for rehearing or in the alternative *sua sponte* modification of the opinion rendered herein on appeal in *Utah*.

Movant is now an intervenor in *United States v. El Paso Natural Gas Company*, designated Civil Action No. C-2626, in the United States District Court for the District of Colorado, where the Court is conducting divestiture hearings pursuant to this Court's order on remand in *Utah*.

California, unlike the East, Midwest and most other areas of the country, has depended upon natural gas for many years. Householders have long relied almost exclusively upon natural gas as the prime source of heat. The economy of the state developed with gas as the primary source of fuel. In most other areas, the availability and widespread use of natural gas is a post-World War II phenomenon. It displaced other fuels which had for years supplied the basic household and industrial requirements.

The District Court has issued an interim opinion on divestiture of gas reserves and has completed hearings on the plan of divestiture and the qualifications of the applicants for acquisition of the properties to be divested. Briefs on the plan and on the applicants' qualifications are to be filed on April 3, 1972.

The divestiture which would result if the District Court pursues the literal requirement of this Court's order will injure Movant and the other existing California gas customers of El Paso and the consumers they serve.

Movant has substantial and vital interests which will be adversely affected by divestiture. It is a regulated utility serving the gas and electric needs of most of northern and central California.

Movant presently purchases approximately 1.1 billion cubic feet of natural gas per day from El Paso, approximately .98 billion cubic feet of natural gas per day from Pacific Gas Transmission Company and an average .683 billion cubic feet of gas per day from California production.

However, its ability to meet its present demands will drop to an alarming level by the end of this decade unless it finds additional sources not only to meet its present needs but its future needs as well.

Additional sources of gas must be found to meet California requirements. Yet, the nation is faced with a critical shortage of gas.

IV

THIS MOTION IS CONCERNED ONLY WITH THE REMEDY UNDER PRESENT CIRCUMSTANCES AND NOT WITH THE DETERMINATION THAT EL PASO VIOLATED THE CLAYTON ACT

Movant does not here defend El Paso's past conduct. El Paso violated the Clayton Act and did so, in the opinion of Movant, to maintain its then existing position as the sole

out-of-state supplier of natural gas to California. Movant was already dissatisfied with its position of major reliance on El Paso and prior to El Paso's Pacific Northwest acquisition initiated a project to bring gas to northern California from Alberta, Canada, through a 50-percent owned subsidiary of movant, Pacific Gas Transmission Company (PGT). Movant is convinced that the lack of opposition to, and interference with, this project on the part of El Paso was due to the pendency of the antitrust action. Under this umbrella, the project was successfully organized and PGT obtained the requisite authorization from the Federal Power Commission without El Paso opposition. Similarly, under this umbrella Transwestern Pipeline Company was able to reach the California market and obtained approval for and constructed a pipeline from the Permian Basin of Texas to the California boundary to sell gas to the Pacific Lighting Companies serving the vast Southern California market.

Had El Paso not been inhibited by the antitrust action then pending, it unquestionably would have opposed those two new entries into the California market. It certainly would have delayed them and might well have blocked them entirely.

This motion, therefore, recognizes that there was ample justification for the antitrust action against El Paso, the finding that it was in violation of the Clayton Act, and the order of divestiture[1] in the circumstances as they then existed. What we ask here is relief from the divestiture order because of changed circumstances.

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1. We do, however, question, as did Justice Harlan in his dissent in *U.S. v. El Paso*, 376 U.S. 651 (1964) the propriety of this Court's abandonment of the long standing and consistently followed practice in all other cases of leaving it to the District Court to fashion the remedy in the first instance.

V

CHANGED CIRCUMSTANCES ARE SUCH THAT DIVESTITURE WILL DEFEAT THE VERY PURPOSE FOR WHICH IT WAS ORDERED BY THIS COURT

As this Court has held that (a) the purpose of divestiture was to restore competition in the California market and (b) "the public interest is our sole concern," it must permit consideration of the drastically changed circumstances which establish that divestiture will harm California's competition for gas supplies and is contrary to the public interest.

A. Divestiture Cannot Restore Competition for Future Increments of California Demand

This Court ordered divestiture to restore competition between rival suppliers seeking to serve future increments of demand to California. *United States v. El Paso,* 376 U.S. 651, 660 (1964). Under today's conditions in the natural gas industry, no form of divestiture can restore the type of competition provided by Pacific Northwest in 1957. The undisputed evidence in the record presently before the District Court proves that competition for future increments of demand in the California market no longer exists. The demand for gas in California is virtually insatiable.

The Federal Power Commission has officially held that a natural gas shortage exists today. In a Statement of Policy designated Order No. 448, issued January 24, 1972, the Commission said:

> "The Commission in response to the provisions of the Revenue Act of 1971, approved December 10, 1971 (Public Law 92-178, 85 Stat. 497), concerning the restoration of the investment tax credit therein known as the Job Development Investment Credit restates that 'the natural domestic supply of the product' (natural gas) '* * * is insufficient at this time to meet the present and future requirements of the domestic economy.' The Commission has heretofore found on the basis of an

evidentiary record and hearing that there is a natural gas shortage, Area Rate Proceedings (Southern Louisiana) Docket Nos. AR61-2, *et al.*, AR69-1; Opinion Nos. 598 and 598-A (July 16, 1971, September 9, 1971, respectively). As indicated in Order No. 437A-4 issued November 29, 1971: 'This Commission has been confronted with conclusive evidence demonstrating a gas supply shortage. Every indication is that such a shortage will continue into the near future.'" [37 Fed. Reg. 2502]

On March 9, 1972 in *Distrigas Corporation*, Opinion No. 613, ... FPC ....., the Federal Power Commission once again discussed the gas supply shortage. It there said:

"The United States is running dangerously short of natural gas. . . .

• • •

The production and deliverability problems associated with the decline in reserves has now reached such critical proportions that the interstate pipeline systems cannot satisfy the requirements of its existing customers." Slip Opinion p. .....

Later in its opinion the Commission said:

"The FPC staff estimates that between 1971 and 1990, the United States will require more gas than will be available. These levels of 'unsatisfied demand' are foreseen even after liberal allowances for pipelines imports, LNG imports, coal gas, Alaskan gas and reformed gas.

• • •

"The natural gas industry . . . has committed substantial resources to the development of Alaskan and Arctic gas." Slip Opinion p. .....

Furthermore, it is undisputed in the record before the District Court that there are no uncommitted gas reserves in the lower forty-eight states available to support a new project to serve a future increment of California demand.

Competition, in the sense referred to by this Court in *U.S. v. El Paso*, no longer exists and is unlikely ever again to exist. No competitive hearings to serve California have been held before the FPC since the *Gulf Pacific* case filed in 1963. The entire natural gas pipeline industry is having difficulty in obtaining domestic natural gas in the volumes required to enable it to serve existing markets.

Divestiture will not create competition for it cannot create new uncommitted reserves which can supply future increments of the California demand. Competition exists today only for new reserves. Markets compete for supplies; suppliers are not competing for markets.

B. Divestiture Will Reduce the California Market's Competitive Position in the Struggle for New Reserves

The undisputed evidence before the District Court shows that all pipelines are frantically seeking reserves to bolster their failing supplies and give hope of meeting some of their increased demands. Potential reserves in Alaska and the far reaches of Canada, its Northwest Territories and even its Arctic Islands are the subject of intensive gas acquisition efforts by major pipeline systems and gas distribution companies. Millions of dollars are being committed merely for the chance to contract for the gas when discovered and developed.

According to an article in *The Oil and Gas Journal*, as long ago as October 25, 1971, U.S. utilities had pledged advance payments of some $886.6 million for exploration and acquisition of gas supplies. Of this total, payments of some $463.6 million had then been made or agreed to with producers in Canada and Alaska. A breakdown of this total is as follows:

Advance Payments Made or Agreed to By Pipeline Companies To Producers in Canada and Alaska

Utility	Advance to	($ Million) Amount	Area
Columbia Gas System	Sohio	$200.0	Prudhoe Bay
	Dome	30.0	Arctic Islands
	Panaretic	12.5	Arctic Islands
	BP Canada	25.0	E. Canada
	Total	267.5	
Consolidated Natural Gas	C. Delhi	10.0	NWT, Yukon
	Dome	10.0	Arctic Islands
Natural Gas Pipe	TransCanada	6.6	Alberta
Northern Natural	Aquitaine, Amerada, Amoco, Mobil, etc.	30.0	Alberta
	Mobil and 8 others	20.0	Alberta
	Husky, et al	2.6	Alberta
	Magnorth	9.4	Arctic Islands
	Panaretic	12.5	Arctic Islands
	BP Alaska	30.0	North Slope
	Total	104.5	
Pacific Gas & Elec.	Anderson Team	10.0	Alberta
	Numerous producers	7.0	Alberta
	Unnamed recipient	10.0	Alberta
	Inexco	5.0	NWT, Yukon
Pacific Lighting	Panaretic	20.0	Arctic Islands
Panhandle Eastern	TransCanada	4.4	Alberta
	Dome	10.0	Arctic Islands
Tenneco	Panaretic	37.5	Arctic Islands
	TransCanada	5.1	Alberta
Texas Eastern	Panaretic	12.5	Arctic Islands
Texas Gas Transmission	Canadian Delhi	10.0	NWT, Yukon
	Dome	10.0	Arctic
	Total	463.6	

The Columbia Gas System has committed a staggering $267.5 million dollars, and Northern Natural $104.5 million. The former serves the East and part of the Midwest whereas the latter serves the Midwest. Since October 1971 many more millions have been committed.

A comparison of these amounts with the net assets subject to transfer to New Company of approximately $238 million dramatically illustrates the impotence of New Company to assist California in this competition between market areas for the gas reserves of Alaska and Canada.

The acquisition of reserves and the development of the vast projects necessary to bring the reserves from these remote areas to the California market will involve the expenditure of enormous sums of money.

California needs all of the economic strength that can be marshalled on its behalf to participate on an effective level in this high stake competitive struggle by all of the United States markets for adequate supplies of gas.

Divestiture will deal a heavy blow to California's competitive position. In simple terms, it will reduce the economic muscle of the forces available to California in this competitive struggle.

C. The Fracturing of El Paso Will Result in Two Separate Entities Each Less Effective in the Competitive Struggle Than the Present El Paso Corporation

In the event of divestiture, the remaining El Paso system would have no pipeline connection to the Canadian gas reserves. The divested company (New Company) would be a far less effective competitor for Canadian reserves than El Paso as it is presently constituted. Competition for Canadian reserves requires enormous financial commitments which the New Company would not be able to support. New Company would be approximately the same size as Colorado Interstate Gas Company (CIG). That company's experience as testified to before the District Court by its witness Mr. Pelican has been that one of its size

is unable to compete for reserves literally in its own backyard against one of the major pipeline companies, Panhandle Eastern Pipeline Company (Panhandle). Panhandle acquired reserves in eastern Colorado simply because it outbid CIG. New Company would completely lack even the ante required to play in the high stake Canadian competitive struggle.

VI

CHANGED COMPETITIVE CIRCUMSTANCES REQUIRE A REVIEW OF THE REMEDY

When a violation of the antitrust laws has been found after protracted litigation in a complex situation, the objective is to fashion a remedy designed to restore and preserve competition.[2]

Once the remedy has been prescribed the Court still has not only the power but the duty to modify its judgment where the original need has disappeared[3] or where such modification is in the public interest.[4]

In *United States v. Swift & Co.*, et al., 286 U.S. 106 (1931) Mr. Justice Cardozo said, "We are not doubtful of the power of a court of equity to modify an injunction in

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2. cf. *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 4 (1958) for the policy behind the protection of competition in Sherman Act cases.

3. *Milkwagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 287 (1941), deals with the power to modify injunctive relief but the principle is applicable to this discussion. *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178 (1948) indicates that there is a duty to modify orders whose reach has become too broad.

4. The Government's Briefs to the Supreme Court in *United States v. Armour & Co. and General Host Co.*, filed February 5, 1970 and in *United States v. Armour and Greyhound Co.*, filed in March 1970 indicate that the Government itself recognizes a duty to review periodically all antitrust decrees and to seek modification where such is in the public interest.

adaptation to changed conditions though it was entered by consent." (p. 114). Regardless of whether the decree has been entered after litigation or by consent, "In either event, a court does not abdicate its power to revoke or modify its mandate if satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong." (pp. 114-115).[5]

The cases cited below deal with modification of injunctive remedies in the Sherman Act cases involving conspiracies and restraints of trade. The principles are even more obviously applicable to remedies ordered in civil actions brought under the Clayton Act.

None of these cases is clear authority for altering the remedy of divestiture in the *El Paso* case, but they indicate a willingness to examine changed circumstances and new conditions in evaluating a previously prescribed remedy.

VII

THE DISTRICT COURT SHOULD BE PERMITTED TO ADOPT A REMEDY OTHER THAN DIVESTITURE IF IT WOULD BETTER SERVE THE PURPOSES OF THE COURT'S DECISIONS HEREIN

Relief from the strictures of the mandate to enable the District Court to fashion a remedy more in keeping with the basic purpose of this Court's prior decision herein will not unduly delay the culmination of this long, drawn-out litigation. Very little additional evidence, if any, would be required to enable the District Court to determine whether the circumstances have changed to such an extent to make an alternative remedy more appropriate. One effective

5: In the cited case, however, the court rejected the particular modification of the remedy (injunction) decreed below because the modification permitted the defendant packers to use their facilities to get the same unfair advantage over competitors which had led to the original injunction.

alternative remedy would be retention of the properties by El Paso with the following conditions:

A. El Paso is prohibited from opposing any project to bring additional gas to California;

B. El Paso shall agree to transport under contract such volumes of natural gas as may be acquired by any party for resale in California and make such additions to its system as are necessary for the purpose.

Such a remedy would preserve the economic weight of the combined companies and enable El Paso to play a vigorous role in behalf of the California market in the competition for reserves. Additionally, it would transport gas to California if others were able to acquire the reserves required to support such transportation. In this manner, the California market would be in a strong competitive position and hence assured that it will at least have a reasonable opportunity to acquire a fair share of future discovered gas in competition with the economic weight of such giants as those who have already committed $267.5 million for gas to come from Alaska, the Arctic Islands and other distant areas of Canada.

On the other hand, the District Court on review of the evidence may conclude that divestiture is still the appropriate remedy and select a purchaser from among the applicants for acquisition.

CONCLUSION

For the reasons set forth above, Movant respectfully submits that it has shown compelling reasons for reconsideration of the remedy to be applied for El Paso's violation of the antitrust laws and requests this Court, acting

under its *plenary* power in respect to its own mandates, to modify its mandate in *Utah v. El Paso* to provide, in effect, that the District Court should order divestiture *or such other remedy as it may find more appropriate* in the circumstances as they exist today.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Motion For Modification of Mandate is presented in good faith and not for delay.

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